In the High Court of Judicature at Madras

Dated : 09.9.2004

Coram :

The Honourable Mr.Justice R.BALASUBRAMANIAN

and

The Honourable Mr.Justice N.KANNADASAN

Criminal Appeal NO.1085 of 2001

Aiyyasamy
..Appellant
-Vs-

State of Tamilnadu rep.by the
Inspector of Police, Podanur
Police Station, Podanur
Coimbatore District.
..Respondent

APPEAL under Section 374(2) of the Criminal Procedure Code against the judgment dated 14.11.2000 made in S.C.No.204 of 2000 on the file of the Principal District and Sessions Judge, Coimbatore.

!For Appellant : Mr.D.Natarajan

^For Respondent : Mr.E.Raja, APP

:JUDGMENT WAS DELIVERED BY R.BALASUBRAMANIAN,J

The appellant stands convicted for an offence under Section 302 of the Indian Penal Code for which he stands sentenced to undergo imprisonment for life by judgment dated 14.11.2000 in S.C.No.204 of 2000 on the file of the Court of Sessions, Coimbato That conviction is in challenge in this appeal. Heard Mr.D.Natarajan, learned counsel appearing for the appellant and Mr.D.Raja, learned Additional Public Prosecutor for the State.

2. The case of the prosecution is that at 7 AM on 3.4.1995 the appellant killed his wife by indiscriminately cutting her and therefore he is guilty of committing the offence under Section 302 of the Indian Penal Code. PW2 is a resident of Athupalam e had not seen the accused prior to the occurrence. He had gone to Nanjundapuram on the day of occurrence to take a loan from some of the persons residing there to whom he had already made an

approach. He was on his way to Nanjundapuram at about 7 AM. A bout 50 feet ahead of him, a male and a female were going. All of a sudden the male took out an aruval and cut the female accompanying him. Immediately PW2 hid himself behind a bush. He does not know the identity of the male and after the occurrence, t he male went towards east. PW3 is a resident of Nanjundapuram. On the day of occurrence, after attending the calls of nature he was returning home. He knows the accused. He saw the accused running from east towards west and when asked he did not answer at all. The accused had a knife in his arm at that time. On proceeding further PW3 saw the wife of the accused lying down with cut injuries. The accused went towards Vellalore Road.

3. PW1 is the Village Administrative Officer of Vellalore. At about 10.30 AM on 3.4.1995 when he was in his office one person appeared before him with a knife and a blood stained cloth. On enquiry he informed that his name is Aiyyasamy (the accused d after giving other details, confessed that due to quarrel between him and his wife, he cut her on that day between 7 and 7.30 AM as a result of which she died. The accused in Court is the person who appeared before him on that day. On further detailed enquiry the accused confessed as follows :
"The deceased often used to go to Tiruppur which lead to a quarrel between the spouses; the accused would then get her from Tiruppur; his wife had illicit connection with another person and that also gave room for quarrel; on the day prior to the da occurrence he went to Tiruppur and got his wife back to his garden house; on the following morning there was a quarrel again and his wife insisted that the accused must take and leave her at Tiruppur; he suggested that they can go a little later and acc ordingly they left at 7 AM; without the knowledge of his wife he armed himself with an aruval and hid it at his back; as they were passing the bridge of Nanjundapuram he attacked his wife."
PW1 reduced into writing the statement made by the accused which stands marked as ExP1. Then PW1 took the accused to the investigating police station where he surrendered him at about 11 AM. The knife and the blood stained shirt of the accused were also produced by him at the police station. MO1 is the knife and MO2 is the blood stained shirt. ExP2 is the report of PW1 given to the police.

4. PW9 was the Sub.Inspector of Police in the investigating police station on 3.4.1995. At about 11.15 AM on that day PW1 appeared before him along with the accused and gave ExP1 with his report ExP2. He registered it in his police station Crime N 9 of 1995 for the offence under Section 302 of the Indian Penal Code and prepared ExP8 □ the printed first information report. The accused was kept in the police lock up. He recovered MOS 1 and 2 produced by PW1 in Form 95 at that time. He forwarded the material records to the Court as well as to higher officials. PW11 is the Investigating Officer in this case. At about 11.45 AM on 3.4.1995 on receiving telephonic information about the crime, he reached the investigating police station by 12 Noon and collected the printed first information report. Then he commenced the investigation. He proceeded to the scene of occurrence at about 12.30 PM on that day and in the presence of PW6 and another prepared ExP3 □ the

observation mahazar. ExP11 is the rough sketch prepared by him. He conducted inquest over the dead body in the presence of panchayatdhars and witnesses, namely PWS 1, 2, 4 and 5. ExP12 is the inquest report prepared by him. Then through PW7 - the Police Constable he sent ExP5 □ the re quisition for post mortem with the dead body to the hospital. From the scene of occurrence he recovered MOS 3 to 5 at 3.30 PM on that day under ExP4 attested by the same witnesses. He examined PW6, PW7 and others and recorded their statements. He went back to the police station and sent the accused for judicial remand.

5. PW7 is the Police Constable who accompanied the dead body for post mortem with the requisition given by the Investigating Officer. He was present through out post mortem. After post mortem he removed MOS 6 to 13 from the dead body and handed ov he same to the Investigating Officer with his report ExP6. The dead body was handed over to the relatives. PW8 is the doctor before whom the dead body was taken by PW7 for post mortem. PW8 commenced the post mortem at 10 AM on 4.4.1995 during which ti me he found the following symptoms as noted in ExP7 □ the post mortem certificate :
"1. Cut injury of the middle third of neck 16 X 12 cm bone deep exposing the cut ends of soft tissues cervical vertebra C5. Major blood vessels on left side of neck and other soft tissues of the neck on the rt.side carotid anterior and jugular veins not involved.
2. Cut wound 5 x 3 cm bone deep left angle of mandible.
3. Cut wound 5 X 3 cm bone deep left body of mandible with fracture of the underlying bone.

4. Cut wound 2 X 1 cm deep rt.side angle of mandible.
5. Cut wound 7 X 3 cm cavity deep on rt.side body of mandible.
6. Cut wound 4 X 2 cm muscle deep rt.side middle third of neck.
7. Cut wound 5 X 3 cm bone deep rt.side root of neck.
8. Cut wound 6 X 2 cm bone deep top of left shoulder.
9. Cut wound 8 X 3 cm bone deep top of scapular region left side with fracture of scapular bone.
10. Cut wound 6 x 2 cm bone deep left deltoid region.
11. Cut wounds 4 Nos.each measuring 4 X 2 cm muscle deep left dorsal hand.
12. Cut wound 3 Nos.each measuring 4 X 1 cm muscle deep rt. dorsal hand.
13. Cut wound 4 X 2 cm bone deep back of rt. scapular region with fracture of underlying bone.
14. Cut wound 4 X 1 cm muscle deep rt.deltoid region.
15. Cut wound 4 X 1 1/2cm muscle deep rt.arm.
16. Cut wound 3 X 1 cm muscle deep on left loin.
17. Cut wound 7 X 2 cm cavity deep on left epigastric region with protrusion of herniated stomach covered with blood clots. All the above wounds are bruised and margins are regular.

Internal :
Trachea seen cut on left side. Hyoid bone intact. Stomach seen cut on anterior aspect for 4 X 2 cm cavity deep and is empty. No specific smell mucosa normal. Small intestine empty. No odour. Hear chambers empty. No lesion. Lungs, liver, spleen, ki s pale. UB empty. Uterus normal in size

and empty. Skull no fracture. Brain pale. Blood preserved."
The doctor is of the opinion that the deceased died of haemorrhage as a result of multiple injuries described above.

6. PW4 knows the accused as the accused was residing east of his residence. At about 5 or 5 1/2years prior to she giving evidence in Court (the evidence was recorded on 19.10.2000) the accused left in the company of his wife (deceased) at about 6.3 stating that they are going to the place of Aiyammal. Thereafter she heard that the accused murdered his wife and ran away. PW5 is the father of the accused. He would state that the accused and his wife used to quarrel and he used to intervene and bri ng peace between the spouses. He would also state that even on the day prior to the day of occurrence, they were quarrelling with each other and then they left his house. PW6 witnessed preparation of ExP3 the observation mahazar and recovery of MOS 3 to 5 under ExP4.

7. PW11 continued the investigation further by examining the witnesses and recording their statements and when the accused was in a mood to give a confession statement, PW11 gave a requisition ExP9 to the Court to record the confession statement of accused. He sent the case properties to the Court with a requisition to subject the same for chemical examination. He caused photographs of the scene of occurrence and MO14 series and MO15 series are the photographs and negatives. PW10 was the then Judi cial Magistrate No.8, Coimbatore. On receipt of ExP9 he sent the intimation to the prison authorities to secure the presence of the accused before him in Court. Accordingly at 12.40 PM on 19.4.1995 the accused was produced before him. Administering nec essary precaution and warning to the accused PW10 verified as to whether the accused is still willing to give a confession statement. Then he gave him 24 hours time to ponder over the issue, namely whether he is still willing to give the statement or no t. PW10 took the precaution of keeping the accused separately. At about 1.30 PM on 20.4.1995 the accused was again produced before him. Even at that time PW10 advanced necessary warnings to him and made it clear to him that still if he wants to give the confession statement, it is likely to be used against him. In spite of that the accused expressed his willingness to give a statement. Then the statement given by him was recorded by PW10. ExP10 series is the proceedings relating to the recording of the confession statement and the confession statement itself. When the entire proceedings went through in his Court except the Court Officer he saw to that that none else was present. PW11 was succeeded by PW12. After verifying the investigation alread y done by PW11, he made further investigation. Then he ultimately filed a final report against the accused on 20.5.1995 for the offence under Section 302 of the Indian Penal Code.

8. The accused was questioned under Section 313 of the Criminal Procedure Code on the basis of the incriminating materials made available against him. He would admit his relationship with the deceased and with PW5. He would also admit that though P revented him from going, yet he left his house with his wife. When he would also admit that he often used to quarrel with his wife and that it is true that he had taken her, he would deny the evidence of PW9 in toto. He would also retract the judicial c onfession given by him stating that due to compulsion and force used by the police he gave

that statement. He did not examine any witnesses on his side.

9. Mr.D.Natarajan, learned counsel appearing for the appellant very faintly argued for acquittal requesting us to disbelieve the entire oral evidence. Then realising that the tight situation in which his client is placed on the materials available ecord, as an alternate argument, the learned counsel would submit that on the materials available on record, the appellant/accused cannot be convicted for the offence under Section 302 of the Indian Penal Code and the materials on record do definitely sh ow the sustained provocation for the accused to commit the crime warranting extension the benefit of Exception (i) to Section 300 of the Indian Penal Code.

10. We heard the learned Additional Public Prosecutor on all these points. A bare look at the evidence brought before the Court by the prosecution case makes us hold even at the outset that the investigation in this case has been done fairly. Why re saying this is that if really the prosecution wants to foist a case against the accused, then they could have very well brought the evidence of PW2 in tune with their case as projected before the Court. PW2 is the only eyewitness to the occurrence. However he had fairly stated before Court that he did not know the identity of either the accused or the deceased. But he only saw a male attacking a female. There is a ring of truth in the evidence of PW2.

11. The next sequence of evidence is that of PW3. The evidence of PW2 is that after attacking the victim in this case the accused ran towards east. PW3's evidence is that when he was coming in the road, saw the accused running opposite to him towa Vellalore Road. He had also stated that he saw the accused armed with a knife. Proceeding further he saw the victim lying with cut injuries. Therefore the evidence of PWS 2 and 3 definitely discloses one thing, namely PW2 witnessing the occurrence pr oper, the accused fleeing away and then PW3 seeing the accused with the knife in his hand.

12. We now come to the evidence of PW1 – the Village Administrative Officer before whom the accused appeared at about 10.30 AM on the day of occurrence with a knife and blood stained shirt. Therefore the sequence of the events is complete from the t PW2 saw the occurrence till the accused appeared before PW1. Before PW1 the accused had given a confession statement which is in the nature of an extra judicial confession. That confession stands reduced into writing as ExP1 and with his report ExP2 he handed over the accused to PW9 – the Sub.Inspector of Police at about 11.15 AM and then the law was set in motion.

13. Then we have the evidence of PW5 – the father of the accused who speaks about the strained relationship between his son and his wife; the quarrel between them often; the steps taken by him to bring peace between the two; both staying in his hous the day prior to the occurrence and then leaving the house the next morning -though opposed by PW5. This evidence of PW5 that his son and his wife are quarrelling gets support from the oral evidence of PW4 who also speaks about the same fact. Therefore on the evidence of PWS 4 and 5, we are inclined to hold that all is not well in the marital relationship between the accused and his wife. The medical evidence in the

form of PW8 and the post mortem report ExP7 do not give any doubt at all to hold that t he death is due to homicidal violence. The defence also is not disputing that fact.

14. We have already stated that except PW2 none else had seen the occurrence and PW2 also did not identify either the accused or the deceased. But as already stated the fact remains that a lady was done to death in the morning of 3.4.1995 by a male e prosecution case is that it is the accused who is responsible for that act. To sustain this point the prosecution relies upon the extra judicial confession ExP1 given by the accused to PW1 and the judicial confession ExP10 recorded by PW10. It is no doubt true that the extra judicial confession by its nature is a weak piece of evidence. In such cases the Court must exercise caution while deciding to accept the extra judicial confession or not is the settled position in law. The Courts have he ld that if the extra judicial confession is trust worthy and reliable, then it alone can form the basis of the conviction. In this case that difficulty really does not arise since the extra judicial confession has ample material corroboration in the jud icial confession of the accused himself. In fact the contents of the extra judicial confession and the judicial confession are more or less on the same line without any contradictions. We find from the evidence of PW10 that the judicial confession had b een recorded in accordance with law and after administering necessary warnings and precautions to the accused. We do not find any circumstance in the evidence of PW10 which will enable us to hold that the judicial confession is tainted with any illega lity. Likewise, we also do not find anything in the evidence of PW1 which would invalidate the extra judicial confession given by the accused and recorded by him. Therefore we are inclined to accept the extra judicial confession and the judicial confess ion as given voluntarily by the accused and they are true.

15. We looked into the contents of the extra judicial confession.
The sum and substance of the stand of the accused in the extra judicial confession is as follows :
"I had come to know that my wife had developed some contact with those working in the godown where she was also employed; this resulted in a quarrel between myself and her and in continuation thereof my wife will go to my father-in-law's place at Ka ampalayam. Once all my relatives joined together; held a panchayat; advised both of us not to quarrel any more; and united us; even then my wife had refused to discharge her obligations as a wife to her husband and she rejected my sexual advances to her; only after compulsion she would sleep with me; on a sunday, namely 2.4.1995 I took my wife to my father-in-law's house; after lunch we left and reached Coimbatore; en route she took pan-parag (tobacco); as I do not like that smell at all, I shouted at h er; reaching home in the night she wanted to leave to her father's place immediately and I told her that I will take her in the next morning; today morning (occurrence day) also she quarrelled with me and therefore I decided to take her; at that time wit hout her knowledge I concealed an aruval in my hip and en route I attacked her."
The sum and substance of the stand of the accused in the judicial confession (ExP10) is as follows :
"After marriage I was residing with my wife at Tiruppur; I never had

intercourse with her and I never even slept by her side; thinking that she is new to the marital life and time will cure her, I tried to be affectionate to her; my wife was working a company; one month after marriage I was returning home at about 2 or 2.30 PM after work; at that time I saw my wife and her employer in the bed together; she disclosed that it is her employer; I advised her to forget the past and lead a faithful life a nd I kept her in good humour thereafter; I waited for some time and when I neared her, she picked up a quarrel and went to her father's place; when I went to get her back she complained to local people that I used to beat her every day under the influenc e of liquor and I have been asking her to give her jewels; she stayed there for about 11 months; thereafter I went to get her back and her parents did not allow her to leave; after the panchayat was held I took her to my place; even there for a month we were not in talking terms; she did not sleep by my side; I begged her and she refused; she quarrelled again and then left; one and half months later, I convened twice or thrice panchayats; begged and brought her back; since my father is living in Coimba tore I thought I can take her and settle down; we were in Coimbatore for a few weeks and I was employed for a couple of weeks; even during that time she was insisting that she must go to her father's place which I postponed giving one reason or the other ; on 2.4.1995, I took my wife to her father's place; then we left in the evening and alighted at Perundurai; there I saw the person whom I saw earlier with my wife in the bed; my wife started talking to him; then he left; when we reached Coimbatore she a gain wanted to go back to her father's house; my wife was insisting that she must go to her father's place; since she was not listening to me, I went out; took liquor and came back home; she said that as I have taken liquor I am not her husband any more and that she would once for all settle down in her parents' house; she said that as I am not her husband any more I cannot sleep by her side and she would go and stay with the person whom she has in her mind; next day morning both of us left and at that time I concealed the knife with me with which I attacked her."

16. The sequence of events narrated by the accused in the extra judicial confession as well as in the judicial confession speaks volumes of mental turmoil which the accused had been undergoing from the date of his marriage due to the conduct of hi fe. We have already held that the extra judicial confession and the judicial confession are worthy of acceptance and they undoubtedly disclose the guilt of the accused. But the question that still survives is whether on the facts found stated in the ex tra judicial confession and the judicial confession, can the conviction of the accused under Section 302 of the Indian Penal Code be sustained? Any person as a husband would have expectations from his wife both in the discharge of house hold duties as w ell as discharge of her obligations as a faithful wife to her husband and that is what the appellant has been expecting from his wife. To his shock and dismay he had found that his wife is not loyal to him and in fact on one such occasion he found his wi fe sharing her bed in his house with her employer. No husband of ordinary tolerance with utmost self control and restraint would ever tolerate his wife sharing her bed with another in front of his face and in this case despite that he continued to live with his wife thereafter by begging his wife to give him company in the bed which she flatly refused. Therefore this Court is in a position to visualise the frustration in the mind of the husband/appellant which he was carrying for such a long

period. It looks as though the frustration reaches the end of the breaking point and at that time only he had committed the crime. Obviously his anger must have been bursting at it's seems.
17. A Division Bench of this Court in the case of Suyambukkani Vs. State of Tamilnadu (1989 LW (Crl.) 86) held that in such stated circumstances, the Court can extend the principle of grave and sudden provocation as enunciated in Exception (i) to Se n 300 of the Indian Penal Code to " sustained provocation" and give the benefit of the same to the accused who suffered such provocation by altering the section of offence. That judgment had been consistently followed by this Court subsequently in a num ber of cases. The facts as disclosed by the accused in his extra judicial confession and the judicial confession squarely bring his case under the theory of sustained provocation as enunciated by the judgment referred to above and that judgment in our o pinion squarely applies to the case on hand. Therefore while confirming that the accused is guilty we are inclined to hold that Exception (i) to Section 300 of the Indian Penal Code gets attracted to the case on hand.

18. Accordingly we are inclined to set aside the conviction of the appellant under Section 302 of the Indian Penal Code and acquit him thereof. Instead we hold him guilty for the offence under Section 304(1) of the Indian Penal Code and sentence hi undergo rigorous imprisonment for a period of seven years. The criminal appeal stands disposed of accordingly.

Index : Yes
Internet : Yes

To

1.The Principal Sessions Judge, Coimbatore.
2.The District Collector, Coimbatore.
3.The Director General of Police, Chennai.
4.the Public Prosecutor, High Court, Madras.
5.The Superintendent, Central Prison, Coimbatore.
6.The Inspector of Police, Podanur Police Station, Podanur, Coimbatore Dist.

RS

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